

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners: Edward J. Gleiman, Chairman;
W.H. "Trey" LeBlanc III, Vice Chairman;
Dana B. Covington, Sr.; Ruth Y. Goldway;
and George A. Omas

Renewal of Experimental Classification and Fees for Weight-Averaged Nonletter-Size Business Reply Mail Docket No. MC99-1

Classification and Fees for Weight-Averaged Nonletter-Size Business Reply Mail Docket No. MC99-2

NOTICE AND ORDER ON CONCURRENT REQUESTS
FOR RECOMMENDED DECISIONS (AND RELATED MOTIONS) AFFECTING
CERTAIN NONLETTER-SIZE BUSINESS REPLY MAIL

(Issued March 16, 1999)

Introduction. On March 10, 1999, the Postal Service filed concurrent requests with the Commission for recommended decisions on proposed changes in the Domestic Mail Classification Schedule (DMCS). Both requests were filed pursuant to § 3623 of the Postal Reorganization Act, 39 U.S.C. § 101 et seq.

The proposed changes affect certain nonletter-sized Business Reply Mail (BRM). They grow out of an ongoing, two-year experiment authorizing two alternatives to the traditional manual method of accounting for this type of mail. These alternatives are referred to as the "weight averaging" method and the "reverse manifest" method. The experiment was authorized as a result of Docket No. MC97-1. It began June 8, 1997 and expires June 7, 1999. See Order No. 1148 (December 18, 1996); 61 FR 67860-62 (December 24, 1996); PRC Op. MC97-1 (April 2, 1997); and Decision of the

Governors of the United States Postal Service on the Commission's Recommended Decision (May 6, 1997).

The Service represents, in its two requests and related filings, that developments warrant making the experimental classification and fees permanent for the weight averaging accounting method, but not for the reverse manifest method. At the same time, the Service finds that certain technical and administrative issues related to weight averaging have emerged, and it believes resolution is not possible prior to the experiment's scheduled expiration.

To avoid the disruption in operations and the increase in the per-piece service fee that would occur if the experimental authority expires before a permanent classification for weight averaged nonletter-size BRM can be approved, the Service suggests proceeding on dual procedural tracks. One track — Docket No. MC99-1 — would allow expedited consideration of a temporary extension of the current classification and fees for qualifying weight-averaged BRM under the Commission's experimental rules. The Service asks that this proceeding be conducted pursuant to a Commission order authorizing settlement negotiations and incorporating certain procedures (and related deadlines) entailing action by the Commission or others. See *generally* Request of the United States Postal Service for a Recommended Decision on Renewal of Experimental Classification and Fees for Weight-Averaged Nonletter-Size Business Reply Mail (March 10, 1999). (Also cited here as Docket No. MC99-1.)

The other track — Docket No. MC99-2 — would allow full exploration of costing and pricing issues associated with a permanent classification. These issues include the Service's proposal to eliminate the setup fee, which is an element of the current experiment, and to reduce the per-piece service fee and the monthly sampling/accounting fee. As in the current experiment, the proposed fees under the permanent classification would be assessed in addition to applicable First-Class or Priority Mail postage. See *generally* Request of the United States Postal Service for a Recommended Decision on Classification and Fees for Weight-Averaged Nonletter-

size Business Reply Mail (March 10, 1999). (Also cited here as Docket No. MC99-2). A summary comparison of fees under various options follows.

**Current and Proposed Fees Available to Nonletter-Size BRM
(Assuming Use of an Advance Deposit Account)**

<i>Classification</i>	<i>Per-piece Fee</i>	<i>Monthly Fee</i>	<i>Setup Fee</i>
Current Non-QBRM Mail	8 ¢	None	None
Current (and Docket No. MC99-1) Experimental Weight Averaged BRM	3 ¢	\$3000	\$3000
Proposed Permanent (Docket No. MC99-2) Weight Averaged BRM	1 ¢	\$600	None

Source: Adapted from Docket No. MC99-2, USPS-T-4 at 14 (Table 1).

Effect of the instant requests on the experimental classification involving the reverse manifest accounting method. The Service is not requesting to continue or to make permanent the current experimental classification and fees for the reverse manifest accounting method. Factors contributing to this decision include the participation of only one mailer in the reverse manifesting test; this mailer's subsequent switch to the weight averaging method; the inability to confirm the viability of reverse manifesting (given that the mailer did not achieve the target level of accuracy for postage due estimates during the course of participation); and the inability of subsequent market research to locate any potential customers interested in a

permanent classification for this method. See *generally* USPS-T-4 (in Docket No. MC99-2) at 6-8, referencing USPS-T-2 (in the same docket) and USPS-T-1 in Docket No. MC97-1. In the absence of a separate filing, the experimental BRM classification and fees for reverse manifesting will expire June 7, 1999.

Part I. Nature and Scope of Docket No. MC99-1.

In Docket No. MC99-1, the Service effectively seeks, for eligible nonletter-size BRM using the weight averaging accounting method, an extension of the current experimental classification and fees (in DMCS §931) until implementation of the permanent classification and fees requested in the companion docket, or February 29, 2000, whichever occurs first. According to the Service, inclusion of a date certain as one of the terms of the proposed DMCS language reflects both the “extremely unlikely” prospect that resolution of Docket No. MC99-2 could take the full 10 months permitted and its interest in a smooth transition. March 10, 1999 Motion of the United States Postal Service for Waiver of Rule 67c(a)(1) at 3 (“Rule 67c motion”).

The Service’s Docket No. MC99-1 request includes five attachments. These consist of proposed changes to the DMCS; the certification required by Commission rule 54(p); audited financial statements; an index of testimony identifying witness Kiefer (USPS-T-1) as the sole witness in this proceeding; and a statement regarding compliance with (or requests for waiver of) provisions in Commission rules 54 and 64. Accompanying motions seek waiver of certain data requirements, the waiver of rule 67c (a)(1) referred to above, and authorization of settlement negotiations.

Experimental status. The Service says designation of its Docket No. MC99-1 request as an experimental change shows its interest in application of the Commission’s expedited rules of practice and procedure (39 CFR §§ 3001.67-67d). Request I at 2. In support of the validity of invoking these rules, the Service notes that material issues in the original experiment were the subject of a full presentation by the Service in Docket No. MC97-1, and characterizes the proposal for renewal of the

weight-averaging aspect of the experiment as modest. It also says the proposed treatment will ensure that renewal occurs in a manner that provides continuity for participating post office sites and BRM recipients. *Id.* at 4. The Service further notes that in the absence of the requested extension, the otherwise applicable BRM per-piece fee of 8 cents would have to be assessed during any interim between the expiration of the current experiment and the implementation of permanent fees. *Id.* at 4-5.

Motion for waiver of certain filing requirements. The Service requests waiver of 64(b)(3), 64(d) and 64(h), as well as provisions of rule 54 deemed applicable, either independently or through incorporation by reference in rules 64(d) and (h). Affected subsections include rule 54(b)(3), 54(d), 54(f)-(h), 54(i), 54 (j), 54(k) and 54(l)(ii). March 10, 1999 Motion of the United States Postal Service for Waiver of Certain Filing Requirements Incorporated in the Commission's Rules of Practice and Procedure (as revised March 12, 1999). (Also referred to here as "Filing Requirements Motion.") In support of waiver, the Service cites the limited nature and applicability of the proposed DMCS change. In particular, it notes that the extension request does not entail a fundamental change in any classification or fee or establish a new special service. Moreover, the Service asserts that to the extent total cost-revenue relationships might be implicated by the requested extension, its proposal will not result in significant changes. *Id.* 2-5.

Motion for waiver of rule 67c(a)(1). Commission rule 67c(a)(1) requires that the Service file a plan describing plans to collect data related to the steps it will take during the requested temporary renewal phase of the experiment to achieve a level of readiness sufficient to implement a permanent classification and fees. Rule 67c Motion at 4. The Service contends that the limited purpose of its Docket No. MC99-1 request and the availability of detailed cost data in Docket No. MC99-2 concerning estimated costs associated with the proposed permanent classification and fees render this requirement unnecessary. Moreover, it notes that some of this work is already underway, and that efforts are being made to complete it expeditiously. *Id.* The

Service also invokes the flexibility envisioned by the experimental rules as a reason for the Commission to grant the requested waiver.

Motion regarding settlement proceedings. The Service asks that the Commission establish procedural mechanisms designed to encourage settlement of Docket No. MC99-1, based upon a proposed Stipulation and Agreement. In support of this approach, the Service notes that the “very limited purpose and scope” of its Docket No. MC99-1 request is to extend the duration of the experimental classification and fees for weight-averaged nonletter-size BRM, and that the companion docket — MC99-2 — provides an opportunity to fully explore costing and pricing issues related to a permanent classification and fees. March 10, 1999 Motion of the United States Postal Service to Establish Procedural Mechanisms Concerning Settlement at 1 (as revised March 12, 1999) (“Procedural Mechanisms Motion”).

The Service notes that the purpose of the underlying request is to obtain authority to continue the experiment for a period long enough to ensure resolution of administrative and technical issues before implementation of any classification and fees resulting from Docket No. MC99-2. Procedural Mechanisms Motion at 2. Moreover, the Service says that it anticipates that any discovery in Docket No. MC99-1 related to the requested renewal might be relatively limited in duration and scope. It suggests that participants could initiate discovery, formally or otherwise, immediately upon intervention in the instant proceeding, and notes that this could allow them to decide what course to take in response to the proposed Stipulation and Agreement. *Id.* at 3. The Service states that in the interest of enhancing expedition, it intends to respond to any discovery and information requests related to its extension request within 7 calendar days of service. *Id.* at 3 (fn. 1).

Based on these representations, the Service moves that the Commission include eleven enumerated procedures in its formal public notice of this proceeding or, in the alternative, give notice that they have been proposed. The procedures (set out in Attachment A) relate to various rights and obligations of participants and the Commission, including summary adjudication. They address not only the prospect that

the Stipulation and Agreement will be accepted without opposition, but also the possibility that it will be contested by some intervenors or otherwise not garner the Commission's approval through summary adjudication. The referenced provisions also effectively outline a proposed procedural schedule and many of the obligations of the Commission and participants.

The proposed Stipulation and Agreement. The Stipulation and Agreement the Service has submitted consists of two parts, an attachment, and signature pages. Part I reviews background details; Part II contains 10 terms and conditions. Attachment A consists of proposed DMCS changes.

Part II. Nature and Scope of Docket No. MC99-2.

The Service states that the Docket No. MC99-2 request seeks to make permanent the experimental classification currently authorized for weight-averaged nonletter-size BRM. It also says it seeks to establish applicable BRM accounting fees that more closely correspond to the costs of using this method and to improve service for participating BRM recipients. The filing includes six attachments, consisting of proposed changes to DMCS § 932; proposed changes to DMCS Fee Schedule 931; the certification required by Commission rule 54(p); audited financial statements; an index of testimony and exhibits for four witnesses; and a compliance statement (including references to requests for waiver) regarding submission of information called for in rules 54 and 64.

The direct testimony includes that of witnesses Shields (USPS-T-1), Ellard (USPS-T-2), Schenk (USPS-T-3), and Kiefer (USPS-T-4). Witness Shields addresses the field application of the weight-averaging accounting method for qualifying nonletter-size BRM. Witness Ellard sponsors and addresses the Service's market research. Witness Schenk addresses the costs of counting, rating and billing nonletter-size BRM using the weight averaging method, including a discussion of supporting software, a data collection effort, and a special cost study. Witness Kiefer discusses the

underlying experiment and other matters related to establishment of a permanent classification for weight-averaged nonletter-size BRM.

A contemporaneous motion seeks protective conditions for one of witness Schenk's workpapers, which the Service filed *in camera* at the time it submitted its request. See March 10, 1999 Motion of the United States Postal Service Requesting Protective Conditions for Workpaper 1 of Witness Leslie Schenk. In support of its motion, the Service states that witness Schenk's cost estimates are based upon data that include the incoming BRM piece volumes received by three through-the-mail film processors who compete among themselves and against other firms in the film processing industry. It notes that witness Schenk's access to the data has been granted with the explicit understanding that such data would not be publicly disclosed and would not be disclosed to any competitor of BRM recipients. The Service asserts that without conditional access, it would not have been able to present the cost study supporting the permanent classification and fees. *Id.* at 2. Accordingly, the Service proposes that the same protective conditions applied in identical circumstances in Docket No. MC97-1 (or others approved by the Commission) apply here, and invites the attention of the Commission and others to P.O. Ruling MC97-1/1, Appendix C (January 24, 1997). The Service sets out the proposed conditions (consisting of 10 itemized provisions) and offers Postal Service counsel's assistance with arrangements for obtaining copies of the workpaper, upon the Commission's approval of the protective conditions. *Id.* at 2-5.

Part III. Commission Response to Matters Requiring Action at this Time.

The Commission believes that the Service's proposed procedural approach to reconciling the impending expiration of the Docket No. MC97-1 experiment with its interest in pursuing permanent status for eligible weight-averaged BRM has considerable merit. Substantive aspects of the requests and the accompanying motions warrant further evaluation, but the submissions as a whole provide a

comprehensive assessment of the state of the current experiment, the procedural steps the Service believes should be taken, and the impact of the proposed changes. The Commission strongly encourages interested persons to promptly review the related filings in their entirety.

The Commission agrees to authorize settlement negotiations, as requested by the Service. However, it declines to make a blanket adoption of the actions the Service sets out in its Procedural Mechanisms motion at this time. These actions appear to adequately address potential procedural developments, but the Commission is interested in participants' observations on the advisability of certain deadlines that have been proposed. Therefore, the Commission grants the alternative relief the Service suggests by providing notice that these procedural steps and related dates have been proposed. Any objections to entry into the record of this proceeding all of the Service's pertinent Docket No. MC99-1 filings to date should be submitted by April 5, 1999, which is also the deadline for intervention. The relatively short period for intervention is justified by the limited number of mailers or others likely to be affected and the likelihood that potential intervenors (in both cases) are already participating in the ongoing experiment and have been made aware, on an informal basis, of the Service's intentions to file these request.

Action on other Docket No. MC99-1 motions. In addition to seeking consideration of its request under the Commission's experimental rules, the Service moves for waiver of certain filing requirements (in rules 54 and 64) identified earlier in this order and of rule 67c(a)(1). Before ruling on the appropriateness of these requests, the Commission will consider participants' views. Comments (on any or all of these matters) are to be filed no later than April 5, 1999.

Actions in Docket No. MC99-2. The protective conditions the Service proposes for one of witness Schenk's workpapers were used successfully in Docket No. MC97-1. It therefore seems that there should be no objection to adopting the same approach in this case; however, the Commission will consider comments in opposition to the conditions the Service proposed if filed by April 5, 1999.

The Service has not proposed any procedural dates or alternative procedural mechanisms in Docket No. MC99-2. The Commission believes it might be useful to learn whether participants are interested in establishing any preliminary dates or discussing whether the request for permanent authority may also be a candidate for settlement. Comments addressing these topics shall be filed no later than April 5, 1999, and participants should be prepared to address these matters at the prehearing conference.

The Commission directs interested parties to file notices of intervention in this proceeding no later than April 5, 1999, which is also the deadline for filing such notices in Docket No. MC99-1.

Intervention in these proceedings. Anyone wishing to be heard in either or both cases is directed to file a written notice of intervention with Margaret P. Crenshaw, Secretary of the Commission, 1333 H Street, NW, Suite 300, Washington, DC 20268-0001 no later than April 5, 1999. Notices should indicate whether an intervenor is seeking full or limited participation status. See 39 CFR §§ 3001.20 and 3001.20a.

Representation of the general public. In conformance with § 3624(a) of title 39, U.S. Code, the Commission designates Ted P. Gerarden, Director of the Commission's Office of the Consumer Advocate (OCA), to represent the interests of the general public in both proceedings. Pursuant to this designation, Mr. Gerarden will direct the activities of Commission personnel assigned to assist him and, upon request, supply their names for the record. Neither Mr. Gerarden nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding. The OCA shall be separately served with three copies of all filings, in addition to and contemporaneous with, service on the Commission of the 24 copies required by section 10(c) of the Commission's rules of practice [39 CFR § 3001.10(c)].

It is ordered:

1. The Commission will sit en banc in both Docket No. MC99-1 and MC99-2.
2. Notices of intervention in Docket Nos. MC99-1 and MC99-2 shall be filed no later than April 5, 1999.
3. Ted P. Gerarden, director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public in Docket Nos. MC99-1 and MC99-2.
4. The Postal Service and other participants are authorized to pursue settlement of the issues in Docket No. MC99-1 based on the Stipulation and Agreement the Service has filed.
5. Interested persons are placed on notice that the Service has proposed eleven procedures be taken in connection with settlement, including many that determine rights and obligations of the Commission and participants. (The referenced procedures are presented in Attachment A of this notice and order.)
6. Postal Service counsel may act as settlement coordinator in Docket No. MC99-1 or delegate this responsibility to another participant in the proceeding. The Commission shall be promptly notified if a delegation occurs.
7. The Service's Docket No. MC99-1 request (with associated attachments), the testimony filed with the request, and the Stipulation and Agreement shall be entered into the record of the Docket No. MC99-1 proceeding on April 6, 1999, if no objection to that procedure is filed with the Commission by April 5, 1999.
8. Comments on the appropriateness of considering Docket No. MC99-1 under Commission rules 67-67d relating to experiments shall be filed no later than April 5, 1999.
9. Answers to the Postal Service's March 10, 1999 motions referenced in the body of this order concerning waiver of certain filing requirements and waiver of rule 67c(a)(1) shall be filed no later than April 5, 1999.
10. In connection with Docket No. MC99-2, answers to the Postal Service March 10, 1999 motion requesting protective conditions for witness Schenk's workpaper 1 shall be filed no later than April 5, 1999.

11. Comments on the advisability of setting tentative procedural dates in Docket No. MC99-1 (other than for notices of intervention) shall be filed no later than April 5, 1999.

12. A prehearing conference for the consideration of procedural matters in both Docket No. MC99-1 and Docket No. MC99-2 shall be held in the hearing room of the Commission, 1333 H Street, NW, Washington, DC on April 6, 1999, at 11:00 am. The hearing room will be open for the use of interested persons to discuss settlement of any and all issues in these cases on April 6, 1999, at 9:30 am.

13. The Secretary of the Commission shall arrange for publication of this order in the *Federal Register* in a manner consistent with applicable requirements.

By the Commission.

(S E A L)

Margaret P. Crenshaw
Secretary

List of Procedures and Related Deadlines Proposed by Postal Service
(in its March 10, 1999 Motion to Establish Procedural Mechanisms
Concerning Settlement in Docket No. MC99-1)

- (1) Enter the Postal Service's Request (with associated attachments), the testimony and exhibits filed with this Request, and the Stipulation and Agreement into the record in this docket.
- (2) Give parties until March 29, 1999, to intervene.
- (3) Give notice of a formal pre-hearing conference to be convened on March 30, 1999, at 11:00 a.m.
- (4) Make the Commission hearing room available to the Postal Service and the participants on that date at 9:30 a.m. as the venue for an informal off-the-record meeting to discuss the proposed Stipulation and Agreement and related matters in advance of the pre-hearing conference.
- (5) Provide notice to intervenors that, if they wish to contest re-establishment of the experimental classifications and fees in the Postal Service's Request and the proposed Stipulation and Agreement, they must, by April 2, 1999, file a statement of their intention to do so. Any such statement should identify with specificity the classification and fees and other issues contested, and state whether the intervenor intends to offer evidence on any such classification, fees, and issues.
- (6) If no such statements are filed, the record in this case shall be closed and the case submitted to the Commission for summary adjudication;
- (7) If one or more such statements are filed, the filing parties shall have until April 9, 1999, to conduct discovery of the Postal Service;
- (8) The same parties shall have until April 23, 1999, to submit testimony and/or pleadings seeking to establish either that, owing to the existence of genuine

issues of material fact, the proceeding is not suited to summary adjudication or that the Stipulation and Agreement is arbitrary, capricious, or otherwise not in accordance with applicable law. Responsive pleadings by other parties shall be due on April 30, 1999. The record shall then be closed provisionally and the issues adjudicated by the Commission.

(9) If the Commission finds that there are no genuine issues of material fact, it will promptly notify the parties of such and indicate its intention to issue a Recommended Decision accepting the classification and fees proposed in the Request and the Stipulation and Agreement.

(10) If the Commission finds (a) that there are genuine issues of material fact that prevent summary adjudication, or (b) that there are no genuine issues of material fact, but that it declines to recommend renewal of the experimental classification and fees for weight-averaged nonletter-size BRM proposed in the Docket No. MC99-1 Request and the Stipulation and Agreement, then it shall promptly notify the parties, identifying the genuine issues of material fact or other reasons for declining to adopt the proposed classifications and fees, and immediately set an expedited schedule for such additional discovery and hearings which may be necessary for litigation of those matters. During that litigation period, any party to the Stipulation and Agreement may fully litigate the matters identified as disputed by the Commission, including discovery on the Postal Service with respect solely to those issues and presentations of testimony without withdrawing from the Stipulation and Agreement, provided that such party (a) continues to support a Commission recommendation of the classifications and fees proposed in the Postal Service's Request and (b) agrees to remain bound by the terms of the Stipulation and Agreement.

(11) If none of the actions by the Commission provided for in paragraphs 9 and 10 above have occurred by May 7, 1999,¹ any party to the Stipulation and Agreement

may determine not to be bound further by that agreement and must provide written notice to all parties of this fact within three (3) business days of the above date. Any exercise of such right by one or more signatories shall not affect the operation of the Stipulation and Agreement as to other signatories.

¹ The Postal Service desires to allow adequate time for the Commission to take action under either paragraph 9 or 10, but is strongly in favor of expedited resolution of this docket. It is thus hoped that the Commission would be able to act prior to the suggested May 7, 1999, date.